# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1931

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## No. 546

## WALLACE S. HANDY, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF DELAWARE

vs.

## DELAWARE TRUST COMPANY, EXECUTOR UNDER THE LAST WILL AND TESTAMENT OF WILLIAM DU PONT, DECEASED, ET AL.

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ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

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1 In United States Circuit Court of Appeals for the Third Circuit

WALLACE S. HANDY, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT of Delaware, defendant-appellant

vs.

DELAWARE TRUST COMPANY, A CORPORATION OF THE STATE OF DELAWARE, Executor under the Last Will and Testament of William du Pont, Deceased; William du Pont, jr., and Marion du Pont Somerville, plaintiff-appellee

On appeal from a judgment of the District Court of the United States for the District of Delaware

Before BUFFINGTON and WOOLLEY, Circuit Judges, and THOMSON, District Judge

Certificate to the Supreme Court of the United States

(Filed Nov. 24, 1931)

The Circuit Court of Appeals for the Third Circuit, in order that it may properly decide this case, desires the instruction of the Supreme Court. Therefore, under authority of section 239 of the Judicial Code (U. S. C. A., title 28, section 346) it certifies a question of law which arises from the following facts:

*Statement of the facts*

On May 25th, 1926, William du Pont transferred by indenture of trust to Delaware Trust Company, as trustee, for the benefit of his son, William du Pont, jr., et al., securities having a value at the time of the donor's death of $2,025,000.00; on May 25th, 1926, he transferred to same trustee for the benefit of his daughter, Marion du Pont Somerville, et al., securities having a value at the time of his death of $3,313,518.46; on July 12th, 1927, he transferred to the
2 same trustee for the benefit of his daughter-in-law, Jean Liseter du Pont, et al., securities having a value at the time of his death of $583,529.33; on September 21, 1927, he transferred to the same trustee for the benefit of his stepson, George Zinn, et al., securities having a value at the time of his death of $369,257.78. Each of the transfers was a complete and irrevocable gift, inter vivos, and without consideration.

William du Pont died on January 20, 1928. His executor filed an estate-tax return and reported for information purposes the said four transfers but did not include the amounts thereof in the gross estate of the decedent for Federal estate-tax purposes. Upon audit the Commissioner of Internal Revenue determined an additional tax due from his estate by including therein the value at the time of his

death of the properties so transferred by him in excess of the statutory exemption on authority of the second sentence of section 302 (c) of the revenue act of 1926 (44 Stat. 70, chapter 27), which, without regard to what the fact may be, provides that such transfers shall be deemed and held to have been made in contemplation of death. The executor paid the collector $283,130.20, being twenty per centum of the additional tax and interest so determined by the commissioner and gave a bond to the commissioner conditioned for the payment, if due, of the balance of the said additional assessment arising by reason of the inclusion in the gross estate of the decedent of the properties passing under said transfers, or the production of proof of payment of eighty per centum of the additional tax to the State of Delaware or other States. After claim for refund and its rejection, the executor instituted this action in the District Court of the United States for the District of Delaware to recover the sum paid on account of said additional assessment and interest. The case was tried to the court without a jury. The trial court found as facts that no one of the said transfers was made in contemplation of death and held the second sentence of section 302 (c) of the revenue act of 1926 unconstitutional because violative of the due-process clause of the fifth amendment. From a judgment for the executor for the sum of $274,487.07 the collector appealed. Although identical
3 with one of the questions raised and recently certified in Heiner, collector, vs. Donnan, this court, in order to give the parties in this case a standing in the court of last resort and to obtain a direct ruling, ventures to ask the Supreme Court for instruction on the following question:

*Question of law*

1. Does the second sentence of section 302 (c) of the revenue act of 1926 violate the due-process clause of the fifth amendment to the Constitution of the United States?

JOSEPH BUFFINGTON, *Circuit Judge.*
VICTOR B. WOOLLEY, *Circuit Judge.*
W. H. S. THOMSON, *District Judge.*

[File endorsement omitted.]
4 [Clerk's certificate to foregoing paper omitted in printing.]
[Endorsement on cover:] Enter. Attorney General. File No. 36360. U. S. Circuit Court of Appeals, Third Circuit. Term No. 546. Wallace S. Handy, collector of internal revenue for the district of Delaware, vs. Delaware Trust Company, executor under the last will and testament of William du Pont, deceased, et al. Certificate. Filed December 3, 1931. File No. 36360.

U. S. GOVERNMENT PRINTING OFFICE: 1932